

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: INTERSTATE POWER AND LIGHT COMPANY, f/k/a IES UTILITIES INC.	DOCKET NOS. DRU-04-2 E-21261
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**ORDER DECLINING TO ISSUE DECLARATORY RULING
AND GRANTING EXTENSION**

(Issued September 15, 2004)

On August 20, 2004, Interstate Power and Light Company (IPL) filed with the Utilities Board (Board) a request for declaratory order or, in the alternative, an extension of time to complete the electric transmission line for which the Board granted a franchise, identified as Franchise 17193, Amendment 1, on September 18, 2000, in Docket No. E-21261. The Consumer Advocate Division of the Department of Justice filed a response on September 14, 2004.

IPL's factual allegations providing background information for the declaratory ruling request were contained in its filing. IPL states that the Board authorized an uprate of 8.6 miles of 34 kV line to 69 kV between the communities of Toledo and LeGrand. IPL further states that it completed the first part of the project, running from the Meskwaki Casino west to LeGrand, and reported to the Board that this part was in service on July 31, 2001. The remainder of the line was to be relocated to accommodate the expansion of Highway 30 to four lanes. However, due to budget cuts in the Iowa Department of Transportation, the expansion did not proceed and

IPL delayed construction of the remainder of the line. IPL must now proceed to complete the line due to an increase in customer load, even though the line may need to be relocated if Highway 30 is expanded to four lanes from the casino to Toledo. IPL seeks an order from the Board declaring that Iowa Code § 478.21(1) and 199 IAC 11.5(5)"c" continue to authorize upgrading the line. In the alternative, IPL seeks a two-year extension pursuant to Iowa Code § 478.21(2).

Iowa Code § 478.21(1) provides:

If the improvement for which a franchise is granted is not constructed in whole or in part within two years from the date the franchise is granted, or within two years after final unappealable disposition of judicial review of a franchise order or of condemnation proceedings, the franchise shall be forfeited and the utilities board which granted the franchise shall revoke the franchise and make a record of the revocation, unless the person holding the franchise petitions the board for an extension of time.

Paragraph 199 IAC 11.5(5)"c" similarly provides:

If the facilities authorized by a franchise are not constructed in whole or in part within two years of the date the franchise is granted, or within two years after final unappealable disposition of judicial review of a franchise order or of condemnation proceedings, the franchise shall be forfeited unless the franchise holder petitions the board for an extension of time pursuant to Iowa Code section 478.21.

The specific question that IPL wants answered in the affirmative is this: "Does IPL's construction of the first part of the transmission line upgrade from the casino to LeGrand satisfy the provision in both statute and rule that the improvement or

facilities must be constructed in whole or in part within two years of the date the franchise is granted, with the effect that the statutory limitation is tolled?" IPL argues that because the project was partially completed, the two-year limitation contained in the statute is tolled and IPL can complete the facilities covered by the franchise without further action by the Board.

The question posed by IPL appears to be one of first impression before the Board. While the statute provides that construction "in whole or in part" must take place within two years, the Board does not believe that the statute means that only one or two poles need to be set within the two-year period, thereby commencing construction "in part," with the franchise holder then having the remaining 25 years to complete the project. Answering IPL's question in the affirmative may result in too broad an interpretation of the statute and rule. Based on the record before the Board, it would be difficult to determine what constitutes "construction in part" as that term is used in the statute. However, it is not necessary for the Board to make this determination in this proceeding. The Board declines to issue a declaratory ruling because the situation confronted by IPL can be resolved by ruling on the alternative request for an extension of time.

Iowa Code § 478.21(2) provides that "[u]pon a showing of sufficient justification for the delay of construction, the board may grant one or more extensions of time for periods up to two years for each extension." The Board has allowed such requests for extension to be filed more than two years after a franchise has been

granted. See Mt. Pleasant Municipal Utilities, "Extension of Franchise," Docket Nos. E-21312, E-21313 (9/6/01).

In support of the extension request, IPL states upgrading the line to 69 kV was connected to the Highway 30 widening project. When the highway project was delayed, it was prudent for IPL to delay construction. However, IPL can no longer wait for the highway project because the upgrade is now necessary to serve existing customer needs.

Based on the information supplied by IPL, which was not contested by any other party, the Board will grant the requested two-year extension. IPL has never exhibited any intention to abandon its franchise and the upgrade is necessary to serve customer needs.

The Board is concerned, though, about the accuracy and timeliness of the information supplied by IPL prior to filing its current request. The July 31, 2001, letter referred to in IPL's petition did not state that only part of the line was completed; in fact, the letter indicated the entire line had been finished. It was not until October 2002 that IPL called the Board's staff to indicate the remainder of the project had been delayed. This telephone conversation was not followed up with written notification or a request for extension until the petition for declaratory order and alternative request for extension was filed on August 9, 2004.

These shortcomings do not negate the necessity to build the remainder of the line to serve customer load and the Board will not cause harm to customers because

of IPL's inadequate communications with the Board, but the Board expects future communications will contain both timely and accurate information. Failure to provide such information will cause the Board to consider appropriate sanctions.

IT IS THEREFORE ORDERED:

1. The Utilities Board declines to issue a declaratory ruling on the question contained in Interstate Power and Light Company petition filed on August 9, 2004, for the reasons contained in this order.

2. The request for a two-year extension of time filed by Interstate Power and Light Company on August 9, 2004, is granted.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 15th day of September, 2004.